

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BRESHAUN NICHOLS,)	CASE NO. 5:14 CV 1271
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
CHRISTOPHER LaROSE, Warden,)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. (Doc. 10), recommending that the Court grant Respondent's Motion to Dismiss Habeas Petition as Time-Barred (Doc. 8) and denying Petitioner's Motion to Amend Petition (Doc. 7) as moot. For the following reasons, the Report and Recommendation is ACCEPTED. The Petition is DISMISSED and the motion to amend is DENIED AS MOOT.

Petitioner commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner is incarcerated following his convictions for felonious assault, attempted murder, aggravated robbery, and having a weapon while under a disability. Respondent filed a motion to dismiss the Petition, arguing that it was time-barred. The

Magistrate Judge issued his Report and Recommendation recommending that the motion be granted because the AEDPA statute of limitations had run. No objections have been filed.

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

Having reviewed the Report and Recommendation, the Court finds no clear error and agrees with the determinations of the Magistrate Judge. Accordingly, the Motion to Dismiss is granted and the Petition is dismissed. The motion to amend is denied as moot. Further, for the reasons stated herein and in the Report and Recommendation, the Court certifies, pursuant to 28 U.S.C. § 1915(a) (3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 5/4/15